

**Introduced by Senator Ashburn**

February 22, 2005

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An act to amend Sections 19816.20 and 20398 of the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

SB 887, as introduced, Ashburn. Public employees' retirement: member designations.

The Public Employees' Retirement Law designates members of that system by classes, for purposes of receiving retirement benefits, and includes the classes of state peace officer/firefighter and state safety member. Under that law, the Department of Personnel Administration has the responsibility of determining if certain categories or positions meet the qualifications for state safety membership and is prohibited from approving safety membership for any class or position that does not meet all of specified criteria.

This bill would prohibit the Department of Personnel Administration from approving safety membership for any class or position unless the Legislature has ratified a report of findings or justification for adding classes to the state safety category prior to finalizing a contract in negotiations with collective bargaining organizations. The bill would also specify that if memorandums of understanding (MOUs) are negotiated to include new classes in the state safety or state peace officer/firefighter membership categories, as specified, prior to legislative ratification, those provisions of the MOU will not take effect until ratification has occurred.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 19816.20 of the Government Code is amended to read:

19816.20. Notwithstanding Section 18717, this section shall apply to state employees in state bargaining units that have agreed to these provisions in a memorandum of understanding between the state employer and the recognized employee organization, as defined in Section 3513, state employees who are excluded from the definition of “state employee” in paragraph (c) of Section 3513, and officers or employees of the executive branch of state government who are not members of the civil service.

(a) The department shall determine which classes or positions meet the elements of the criteria for the state safety category of membership in the Public Employees’ Retirement System. An employee organization or employing agency requesting a determination from the department shall provide the department with information and written argument supporting the request.

(b) The department may use the determination findings in subsequent negotiations with the exclusive representatives.

(c) The department shall not approve safety membership for any class or position that has not been determined to meet all of the following criteria:

(1) In addition to the defined scope of duties assigned to the class or position, the member’s ongoing responsibility includes:

(A) The protection and safeguarding of the public and of property.

(B) The control or supervision of, or a regular, substantial contact with one of the following:

(i) Inmates or youthful offenders in adult or youth correctional facilities.

(ii) Patients in state mental facilities that house Penal Code offenders.

(iii) Clients charged with a felony who are in a locked and controlled treatment facility of a developmental center.

(2) The conditions of employment require that the member be capable of responding to emergency situations and provide a level of service to the public such that the safety of the public and of property is not jeopardized.

(3) *The Legislature has ratified a report of findings or justification for adding classes to the state safety category prior to finalizing a contract in negotiations with collective bargaining organizations. If memorandums of understanding (MOUs) are negotiated to include new classes in the state's safety category prior to legislative ratification, those provisions of the MOU, or subsequent agreements, shall not become effective until legislative ratification has occurred.*

(d) For classes or positions that are found to meet this criteria, the department may agree to provide safety membership by a memorandum of understanding reached pursuant to Section 3517.5 if the affected employees are subject to collective bargaining, or by departmental approval for state employees who are either excluded from the definition of "state employee" in subdivision (c) of Section 3513 or are officers or employees of the executive branch of state government who are not members of the civil service. The department shall notify the retirement system of its determination, as prescribed in Section 20405.1.

(e) The department shall provide the Legislature an annual report that lists the classes or positions which were found to be eligible for safety membership under this section.

SEC. 2. Section 20398 of the Government Code is amended to read:

20398. "State peace officer/firefighter member" also includes:

(a) State officers and employees designated as peace officers as defined in Sections 830.1, 830.2, 830.3, 830.38, 830.4, and 830.5 of the Penal Code, except a patrol member, or a firefighter whose principal duties consist of active firefighting/fire suppression, who is either excluded from the definition of state employee in subdivision (c) of Section 3513 or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service, provided, that those officers and employees have responsibility for the direct supervision of state peace officer/firefighter personnel specified in Sections 20391, 20392, 20393, and 20395. The Department of Personnel Administration shall annually determine which classes meet the above conditions and are not classes specified in Sections 20391, 20392, 20393, and 20395, and report its findings to the Legislature and to this system, to be effective July 1 of each year. *The Legislature shall ratify the report prior to the state finalizing*

1 *a contract in negotiations with collective bargaining*  
2 *organizations. If memorandums of understanding (MOUs) are*  
3 *negotiated to make new classes subject to Section 20391, 20392,*  
4 *20393, or 20395 prior to legislative ratification, those provisions*  
5 *of the MOU shall not become effective until legislative*  
6 *ratification has occurred.*

7 (b) Members who are reclassified pursuant to this section may  
8 file an irrevocable election to remain subject to their prior  
9 retirement formula and the corresponding rate of contributions.  
10 The Director of Corrections may, upon appointment to that office  
11 on or after January 1, 1999, file an irrevocable election to be  
12 subject to the industrial formula and the corresponding rate of  
13 contributions. The elections must be filed within 90 days of  
14 notification by the board. Members who so elect shall be subject  
15 to the reduced benefit factors specified in Section 21353 or  
16 21354.1, as applicable, only for the service included in the  
17 federal system.